Chong Sin Sen v Janaki a/p Chellamuthu (suing as widow of Muniappa Pillai a/l Maritha Muthoo, deceased, on behalf of herself and the dependants of the deceased)

HIGH COURT (JOHOR BAHRU) — CIVIL APPEAL NO 12-59 OF 1996
MOHD GHAZALI J
11 MARCH 1997

Civil Law Act *— Damages — Fatal accident — Dependency claim — Whether a married woman includes any woman who has undergone a customary marriage — Whether a woman who has undergone a customary marriage has locus standi to bring an action on behalf of estate of deceased husband — Civil Law Act 1956 s 7(2)*

Family Law *— Marriage — Validity of — Customary marriage after appointed date not solemnized in accordance with the Law Reform (Marriage and Divorce) Act 1976 — Whether such marriage was valid to confer plaintiff the locus standi to bring an action under the Civil Law Act 1956 as the wife of the deceased husband — Civil Law Act 1956 s 7(2)*

Words and Phrases *— 'Wife' — Civil Law Act 1956 s 7(2)*

The respondent was the widow of one Muniappa Pillai a/l Maritha Muthooo ('the deceased') and had filed an action in the sessions court against the appellant pursuant to ss 7 and 8 of the Civil Law Act 1956 ('the CLA') on behalf of his estate. The deceased was killed in a road accident and the respondent claimed that the appellant was solely or partly negligent for the tort. The appellant applied for the the summons and statement of claim to be struck out pursuant to O 14 r 21(d) of the Subordinate Courts Rules 1980 on the ground that the respondent's action was an abuse of the process of the court.

It was deposed that the respondent and the deceased had only underwent a customary marriage on 31 August 1991. Counsel for the appellant contended that such marriage was void as it was not solemnized in accordance with the Law Reform (Marriage and Divorce) Act 1976 ('the Act'). That being so, counsel contended that the plaintiff had no locus standi to bring the action as she could not claim to be the 'wife' of the deceased and could not fall within the contemplation of s 7(2) of the CLA. In her affidavit, the respondent admitted that she and the deceased only underwent a customary marriage but insisted that the marriage was valid and that she had locus standi to bring the action.

The sessions court judge dismissed the application. The appellant appealed.

Held, dismissing the appeal with costs:

The word 'wife' found in s 7(2) of the CLA should not be restricted to a woman whose marriage has been solemnized and registered pursuant to the provisions of any prevailing Act relating to marriages and divorce. The Married Women Act 1957 provides that a 'married

woman' includes any woman who has undergone a customary marriage — such a 'married woman' would fall within the contemplation of the word 'wife' as found in s 7(2) of the CLA — and the Act also provides that she shall be capable of suing in tort and shall be entitled to all remedies and redress for all purposes. In the instant case, the respondent, having undergone a customary marriage with the deceased, was a 'wife' and hence had locus standi to bring this action on behalf of the deceased's estate (see p 420D–F); *K v JMP Co Ltd* [1975] 1 All ER 1030 distinguished.

[Bahasa Malaysia summary

Penentang merupakan balu seorang yang bernama Muniappa Pillai a/l Maritha Muthooo ('si mati') dan telah memfailkan suatu tindakan di mahkamah sesyen terhadap perayu menurut ss 7 dan 8 Akta Undang-undang Sivil 1956 ('AUS') bagi pihak harta pusakanya. Si mati telah meninggal dunia dalam suatu kemalangan jalan raya dan penentang mendakwa bahawa perayu adalah cuai sepenuhnya atau sebahagiannya bagi tort itu. Perayu memohon supaya saman dan pernyataan tuntutan dibatalkan menurut A 14 k 21(d) Kaedah-Kaedah Mahkamah Rendah 1980 atas alasan bahawa tindakan penentang merupakan satu penyalahgunaan proses mahkamah.

Ia dideposkan bahawa penentang dan si mati hanya telah menjalani perkahwinan lazim pada 31 Ogos 1991. Peguam perayu menghujahkan bahawa perkahwinan itu adalah terbatal kerana ia tidak dilangsungkan menurut Akta Membaharui Undang-Undang (Perkahwinan dan Perceraian) 1976 ('Akta tersebut'). Oleh itu, peguam menghujahkan bahawa plaintif tidak mempunyai locus standi untuk membawa tindakan kerana dia tidak boleh mendakwa dirinya sebagai 'isteri' si mati dan tidak boleh dirangkumi oleh s 7(2) AUS. Dalam afidavitnya, penentang mengakui bahawa dia dan si mati hanya menjalani perkahwinan lazim tetapi menegaskan bahawa perkahwinan itu adalah sah dan bahawa dia mempunyai locus standi untuk membawa tindakan ini.

Hakim mahkamah sesyen menolak permohonan. Perayu membuat rayuan.

Diputuskan, menolak rayuan dengan kos:

Perkataan 'isteri' yang terdapat dalam s 7(2) AUS tidak patut dihadkan kepada seorang wanita yang perkahwinannya telah dilangsungkan dan didaftarkan menurut peruntukan mana-mana Akta yang wujud yang berkaitan dengan perkahwinan dan perceraian. Akta Perempuan Berkahwin 1957 memperuntukkan bahawa seseorang 'perempuan berkahwin' termasuk mana-mana perempuan yang telah menjalani suatu perkahwinan lazim — 'perempuan berkahwin' sedemikian akan dirangkumi oleh perkataan 'isteri' seperti yang didapati dalam s 7(2) AUS — dan Akta tersebut juga memperuntukkan bahawa dia haruslah berupaya mendakwa dalam tort dan patut berhak kepada segala

A remedi dan tebus rugi untuk semua tujuan. Dalam kes ini, penentang, selepas menjalani perkahwinan lazim dengan si mati, merupakan 'isteri' dan maka mempunyai locus standi untuk membawa tindakan ini bagi pihak harta pusaka si mati (lihat ms 420D–F); *K v JMP Co Ltd* [1975] 1 All ER 1030 dibeza.]

B **Notes**

For cases on fatal accidents, see 1 *Mallal's Digest* (4th Ed, 1995 Reissue) paras 2219–2246.

For cases on the validity of a marriage, see 7 *Mallal's Digest* (4th Ed, 1995 Reissue) paras 2119–2120.

C **Cases referred to**

Camden (Marquis) v Commissioners of Inland Revenue [1914] 1 KB 641 (refd)

K v JMP Co Ltd [1975] 1 All ER 1030 (distd)

D *R v Peters* (1885–86) 16 QBD 636 (refd)

Salomon v Salomon & Co Ltd [1897] AC 22 (refd)

Tucker v Collinson 34 WR 354 (refd)

Legislation referred to

E Civil Law Act 1956 ss 7, 8

Courts of Judicature Act 1964 ss 29, 69(4)

Law Reform (Marriage and Divorce) Act 1976 ss 5(4), 6, 9, 22(4)

Married Women Act 1957 ss 2(1), 4

Rules of the High Court 1980 O 18 r 19(1)

Subordinate Courts Rules 1980 O 14 r 21(1)

F **Appeal from**: Summons No 53–310 of 1994–1 (Sessions Court, Johor Bahru)

Neoh Lay Choo (*Tay & Partners*) for the appellant.

G *Baidah bte Mohamed Noor* (*Zaman & Associates*) for the respondent.

Mohd Ghazali J: The respondent is the widow of one Muniappa Pillai a/l Maritha Muthooo ('the deceased') and had filed an action in the Sessions Court at Johor Bahru in June 1994 against the appellant pursuant to ss 7 and 8 of the Civil Law Act 1956 ('the CLA') on behalf of his estate. The deceased H apparently was killed in a road accident which occurred on 28 June 1993 and the respondent is claiming that the appellant was solely or partly negligent for the tort. The appellant filed his defence in September 1994.

On 14 May 1996, the appellant filed an application praying that the summons and statement of claim filed by the respondent be struck out I pursuant to O 14 r 21(1) of the Subordinate Courts Rules 1980 ('the SCR') on the following grounds, namely:

(a) the respondent had no locus standi to bring the action as a dependant of the deceased;

(b) it disclosed no reasonable cause of action; or A

(c) it was otherwise an abuse of the process of the court.

In her affidavit in support of the application, Miss Neoh Lay Choo, counsel for the appellant, stated that the respondent could not claim to be the wife of the deceased as her marriage was void. She contended that it had been contracted in contravention of the provisions of the Law Reform B (Marriage and Divorce) Act 1976 ('the 1976 Act') and as such the respondent had no locus standi to bring the action. She explained therein that since the respondent had brought the action on the basis that she was the wife of the deceased, solicitors for the appellant had requested her solicitors to furnish a copy of her marriage certificate but they failed to C respond. Subsequently, they were informed by the respondent's solicitors that the respondent and the deceased only underwent a customary marriage on 31 August 1991.

It must be noted here that s 5(4) of the 1976 Act provides that after the appointed date — ie 1 March 1982 — no marriage under any law, D religion, custom or usage may be solemnized except as provided in Pt III of the 1976 Act. Section 9 which falls under Pt III provides that a marriage under the Act may only be solemnized by a registrar and s 6 provides every marriage contracted in contravention of s 5 shall be void.

In her affidavit, the respondent admitted that she and the deceased only underwent a customary marriage on 31 August 1991 but insisted that E the marriage was valid and that she had locus standi to bring the action. Counsel for the respondent, Cik Baidah Mohamed Noor in her affidavit laid down the chronology of events with regard to the action and averred that the application was made to delay proceedings. She explained therein that:

(i) the summons and statement of claim were issued on 15 June 1994 F and served on the appellant on 1 July 1994;

(ii) solicitors for the appellant served their notice of appearance on 30 August 1994 and their statement of defence on 27 September 1994;

(iii) it was agreed by both parties before the court on 8 September 1995 G that the appellant was 50% liable for the accident, as a result of which the court adjourned the matter to 13 November 1995 for assessment of damages; and

(iv) the application to strike out was too late in the day — it was only filed on 14 May 1996. H

The application to strike out was heard by the sessions court judge on 20 September 1996 and on 7 November 1996 he dismissed the application and it is against this decision that the appellant has appealed.

At the outset of the hearing of this appeal, the appellant's counsel intimated that her application was only confined to O 14 r 21(d) of the I SCR, ie that the respondent's action was an abuse of the process of the court. She contended that in an action for claim of compensation to the family of a person for loss occasioned by his death, s 7(2) of the CLA provides:

> Every such action shall be for the benefit of the *wife*, husband, parent, and child, if any, of the person whose death has been so caused and shall be brought by and in the name of the executor of the person deceased. (Emphasis added.)

She then went on to argue that since the respondent and the deceased only underwent a customary marriage on 31 August 1991 — which was clearly after the appointed date of the coming into force of the 1976 Act — the marriage was void as it was not solemnized in accordance with the Act. That being so, she contended that the plaintiff had no locus standi to bring the action as she could not claim to be the 'wife' of the deceased and could not fall within the contemplation of s 7(2) of the CLA. To support her contention, counsel referred to the case of *K v JMP Co Ltd* [1975] 1 All ER 1030. In that case, which relates to a claim under the Fatal Accidents Acts 1846 to 1959, the children of a father and mother brought an action, by their mother as next friend, against the defendants for damages under the Acts for the loss that they had suffered from their father's death — the father and mother started to live together in 1964 but they did not marry. The Fatal Accidents Act 1846 provides that when death is caused by negligence an action shall be maintainable — it also provides that every such action shall be brought for the benefit of the wife, husband, parent and child of the person whose death shall have been so caused, and shall be brought by and in the name of the executor or administrator of the person deceased. Consequently, s 1(1) of the Fatal Accidents Act 1959 provides that the persons for whose benefit or by whom an action may be brought under the 1846 Act shall include any person who is, or is the issue of, a brother, sister, uncle or aunt of the deceased person and s 1(2)(c) provides that an illegitimate person shall be treated as the legitimate child of his mother and reputed father. With regard to the mother's claim for compensation, Stephenson LJ said (at p 1037):

> She herself has lost just as much by their father's death as if she had been his widow. But she did not marry him and therefore cannot claim compensation for his death, although their illegitimate children can ... .

In her reply, counsel for the respondent pointed out that the word 'wife' is not defined in the CLA. She then referred to s 2(1) of the Married Women Act 1957, an Act relating to married women (which was enacted in 1957 as FM Ordinance No 36 of 1957 and was revised in 1990 as Act 450 — the revised version came into force on 23 November 1990) which reads:

> In this Act —
>
> 'married woman' includes any woman married in accordance with the rites and ceremonies required by her religion, manners or customs;

She then referred to s 4 which provides for the capacity of married women — it reads:

> Subject to this Act, a married woman shall —
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> ...

(c) be capable of suing and being sued in her own name either in tort or in contract or otherwise and shall be entitled to all remedies and redress for all purposes; and A

...

in all respects as if she were a *feme sole*.

Counsel then contended that since the word 'wife' is not defined in the CLA, the respondent had locus standi — based upon the above provisions of the Married Women Act 1957 — to bring this action in tort as she and the deceased had undergone a customary marriage. In urging that the appeal be dismissed, counsel also pointed out that there was delay on the part of the defendant in making this application to strike out under O 14 r 21 of the SCR — she stressed that the application was filed after a period of about one year and 10 months since the summons and statement of claim were served on the appellant. On this point, she referred to the commentary on O 18 r 19(1) of the Rules of the High Court 1980 which is the equivalent of O 14 r 21 of the SCR, found at p 226 of 1 *Mallal's Supreme Court Practice* (2nd Ed) which reads: B C D

> Any attempt to challenge the authority to sue in the plaintiff's name should be made at an early stage in the suit, and not on an application to strike out under this rule: *Russian Commercial & Industrial Bank v Comptoir d'Escompte de Mulhouse* [1925] AC 112 and *Richmond v Branson* [1914] 1 Ch 968.
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> The rule states that the order may be made 'at any stage of the proceedings'. Still the application should be made promptly ... . But the court has a discretion and an application may be made even after the pleadings are closed: *Tucker v Collinson* 34 WR 354. E

After hearing the submissions of both counsel, I dismissed the appeal and now give my reasons for doing so. According to the notice of appeal, the learned sessions court judge dismissed the application on the ground that it was too premature for him to consider the matter at that stage of the proceedings and that it would be decided at the trial. With respect, what trial? Counsel for the respondent had stated in her affidavit that it had been agreed by the parties that the appellant was 50% liable for the accident and that the only thing pending was the assessment of damages by the court. The assessment of damages was fixed for hearing on 13 November 1995 but as to what transpired on that date is not clear. Be that as it may, I would think that it would have been in order if the learned sessions court judge had considered the application on its merits and decided upon it instead of dismissing the application on the ground that it was premature. Seeing that the matter was before me, and since I was of the view that sending it back to the learned sessions court judge and directing him to decide on the merits of the application would only delay the proceedings further, I invited both parties to argue the appeal. To me, this would be in line with s 29 of the Courts of Judicature Act 1964 read together with s 69(4) of the same Act which provides all civil appeals shall be by way of re-hearing and that in the hearing of appeals, the court may, inter alia, make any order which ought to have been given or made and make such further or other orders as the case requires. F G H I

I would first deal with the question as to whether there was delay on the part of the appellant in making this application to strike out. Counsel for the appellant had stated that since the respondent had brought the action on the basis that she was the wife of the deceased, they had requested solicitors for the respondent to forward a copy of the marriage certificate but her solicitors had failed to do so. She was subsequently informed by counsel for the respondent that it was a customary marriage. As to when she was informed that the marriage was a customary marriage is not clear and as such I gave the appellant the benefit of the doubt, ie the delay, if any, should not vitiate the application. After all, the court has a discretion when considering such an application and furthermore such an application may be made even after the pleadings are closed (*Tucker v Collinson*, referred to above).

The second and to me the only main question which needs to be answered is whether the respondent had locus standi to bring this action. I have dismissed this appeal on the ground that I am of the view that she has. As quite rightly submitted by counsel for the respondent, the word 'wife' is not defined in the CLA. Counsel for the appellant has argued that after the date of coming into operation of the 1976 Act, a marriage contracted in contravention of the provisions of the Act shall be void. Section 9 which is found under Pt III of the 1976 Act provides a marriage under the Act may be solemnized only by the registrar and s 22(4) provides every marriage purported to be solemnized in Malaysia shall be void unless a certificate for marriage or a licence has been issued by the Registrar or Chief Minister or a statutory declaration under sub-s (3) has been delivered to the Registrar or Assistant Registrar as the case may be. Section 5(4) provides that after the date of coming into operation of the Act, no marriage under any law, religion, custom or usage may be solemnized except as provided in Pt III. On the face of it, it would seem that the customary marriage underwent by the respondent and the deceased, as far as the 1976 Act is concerned, would be void — they had only contracted a customary marriage after the date of coming into operation of the 1976 Act and there is no evidence to show that it was solemnized pursuant to the provisions of the 1976 Act, neither has the respondent furnished a copy of the certificate of marriage issued pursuant to the Act. Since the respondent's marriage to the deceased would seem to be void pursuant to the provisions of the 1976 Act, does that preclude her from bringing an action under ss 7 and 8 of the CLA? In other words, is the respondent a 'wife' within the contemplation of s 7(2) of the CLA?

In my opinion, since the legislature has seen it fit not to define what is meant by a 'wife' in the CLA, and unless there be something in the context to the contrary, I would think that that word should be read as applicable to those things to which they would in their natural sense apply. I cannot find anything in the CLA which provides that the term 'wife' as found in s 7(2) should be confined to a woman who is a party to a marriage solemnized and/or registered under any prevailing Act relating to marriages and divorce. That being the case, I would think that it is for the court to interpret that word as found in the CLA as best it may. In *Camden*

(Marquis) v Commissioners of Inland Revenue [1914] 1 KB 641, Cozens-Hardy MR said (at pp 647–648): A

> It is for the court to interpret the statute as best they can. In so doing the court may no doubt assist themselves in the discharge of their duty by any literary help which they can find, including of course the consultation of standard authors and reference to well-known and authoritative dictionaries ... . B

Dictionaries are, of course, not authorities but in order to look for the ordinary meaning of a particular word, they would of course be of valuable assistance. With regard to such sources, Lord Coleridge CJ in *R v Peters* (1885–86) 16 QBD 636 at p 641 said: C

> I am quite aware that dictionaries are not to be taken as authoritative exponents of the meanings of words used in Acts of Parliament, but it is a well-known rule of courts of law that words should be taken to be used in their ordinary sense, and we are therefore sent for instruction to these books. D

What is a 'wife'? According to the *Concise Oxford Dictionary* (9th Ed), a 'wife' is 'a married woman esp in relation to her husband' and in *Jowitt's Dictionary of English Law* (Vol 2, 2nd Ed), she is 'a woman who has a husband'. What is clear is that there must be a marriage before a woman can be termed a 'wife'. E

What is a marriage? According to the *Concise Oxford Dictionary*, a 'marriage' is, inter alia:

> (1) the legal union of a man and a woman in order to live together and often to have children. (2) an act or ceremony establishing this union ... .

and in *Jowitt's Dictionary of English Law*, it is: F

> the voluntary union for life of one man and one woman to the exclusion of all others ... for the purpose of living together and procreating children ...; entered into in accordance with the rules as to the consanguinity or affinity of the parties, and their capacity to enter into and perform the duties of matrimony, and in accordance with the rites or formalities required either by the law of England or the place where the marriage took place. G

Section 5(3) of the 1976 Act provides:

> Every person who on the appointed date is unmarried and *who after that date* marries under any law, religion, *custom* or usage shall be incapable during the continuance of such marriage of contracting a valid marriage with any other person under any law, religion, custom or usage, whether the first mentioned marriage or the purported second mentioned marriage is contracted within Malaysia or outside Malaysia. (Emphasis added.) H

The effect of s 5(3) above is that a person who undergoes, inter alia, a customary marriage on or after the date the 1976 Act came into force — while that marriage is still subsisting — is incapable of contracting a subsequent marriage in Malaysia or outside Malaysia. Thus on the face of it, s 5(3) would seem to denote that there is nothing wrong if a person undergoes a customary marriage after the appointed date except that s 5(4) I

of the Act requires that the customary marriage be solemnized in accordance with Pt III of the Act. Section 24(1) which appears under Pt III of the 1976 Act provides, inter alia, that a priest of any temple may be appointed by the Minister to solemnize any marriage in accordance with the rites and ceremonies of that religion. Consequently, s 25 provides that immediately after the solemnization, the Registrar shall enter the prescribed particulars in the marriage register. However, s 34 provides:

> Nothing in this Act or the rules made thereunder shall be construed to render valid or invalid any marriage which otherwise is invalid or valid merely by reason of its having been or not having been registered.

The above provisions would denote that a customary marriage would be a valid marriage if it is solemnized by a priest of any temple who is duly appointed by the Minister pursuant to the provisions of the 1976 Act but its non-registration would not necessarily invalidate such a marriage. In the instant case, it is not clear whether the respondent's marriage to the deceased was solemnized by such a duly appointed priest. What is clear is that the respondent has not forwarded any evidence to show that it has been registered pursuant to the provisions of the 1976 Act.

Be that as it may, the question arising is, notwithstanding that the respondent's marriage has not complied with the provisions of the 1976 Act, can this omission preclude her from bringing an action under the CLA? I do not think so. In *Craies on Statute Law* (5th Ed), the learned author had this to say:

> In considering what light one statute may throw upon the meaning of another statute, it is necessary to ascertain what assistance may be derived, firstly, from statutes which are in pari materia with the statute under consideration; and secondly from earlier statutes not precisely in pari materia, but in some way relating to or affecting the same subject matter, bearing in mind 'that,' as was said in *Escott v Mastin* (1842) 4 Moore PC 104 at p 123:
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> > '... the same enactment of a statute (or the same direction in a rubric) may receive one construction when it deals for the first time with a given subject matter, and have another meaning and construction when it deals with a matter which has already been made the subject of enactment, and that this is most specially the case where the posterior enactment deals with the matter without making any reference to the prior enactment.'
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> And thirdly, it must be seen what assistance may be derived from subsequent statutes as being what is called 'parliamentary expositions' of prior statutes.
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> In the interpretation of statutes the courts decline to consider other statutes proceeding on different lines and including different provisions ... .

In the instant case, I would decline to consider the provisions of the 1976 Act which to me is a statute which proceeds on different lines and includes different provisions which deals with a different subject matter. The preamble to the 1976 Act reads:

> An Act to provide for monogamous marriages and the solemnization and registration of such marriages; to amend and consolidate the law relating to divorce; and to provide for matters incidental thereto.

I am unable to see how it ought to have any influence upon the question which I have to decide, ie whether the respondent falls within the contemplation of the word 'wife' found in s 7(2) of the CLA. I do not think that I should speculate on what the intention of the legislature was with regard to s 7(2), ie as to whether such a term should only be restricted to a 'married woman' who has undergone a marriage solemnized and registered in accordance with the prevailing Act relating to marriages. In *Salomon v Salomon & Co Ltd* [1897] AC 22 at p 38, Lord Watson said:

> 'Intention of the Legislature' is a common but very slippery phrase, which, popularly understood, may signify anything from intention embodied in positive enactment to speculative opinion as to what the Legislature probably would have meant, although there has been an omission to enact it.

What the legislature intended to be or not to be done can only be ascertained from what it has chosen to enact, either in express words or by reasonable and necessary implication. In my opinion, I do not think that the word 'wife' found in s 7(2) of the CLA should be restricted to a woman whose marriage has been solemnized and registered pursuant to the provisions of any prevailing Act relating to marriages and divorce. The Married Women Act 1957 provides that a 'married woman' includes any woman who has undergone a customary marriage — to me, such a 'married woman' would fall within the contemplation of the word 'wife' as found in s 7(2) of the CLA — and the Act also provides that she shall be capable of suing in tort and shall be entitled to all remedies and redress for all purposes. In the instant case it is my view that the respondent, having undergone a customary marriage with the deceased, is a 'wife' and hence had locus standi to bring this action on behalf of the deceased's estate and that being so, I dismissed the appeal with costs.

Incidentally, I am of the view that the case of *K v JMP Co Ltd* cited by counsel for the appellant had no bearing upon the issue before me as in that case the parties did not marry but lived together as husband and wife.

Appeal dismissed.

Reported by Loo Lai Mee